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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON
9

10 In re:

18-03197-FPC11

11 GIGA WATT, INC.

12 Debtor.
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COMMITTEE'S *EX PARTE* MOTION
FOR ENTRY OF AN ORDER
PURSUANT TO FRBP 2004
AUTHORIZING DISCOVERY EXAM
OF CHAPTER 11 TRUSTEE AND
ISSUANCE OF SUBPOENA *DUCES*
TECUM PURSUANT TO FRCP 9016

17 **I. Preliminary Statement**
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19 The Committee of Unsecured Creditors ("Committee") hereby moves the
20 Court for entry of an *ex parte* order pursuant to FRBP 2004 compelling the Chapter
21 11 Trustee to submit to examination regarding the existence, value, merit, and
22 feasibility of all estate litigation, and authorizing the issuance of a subpoena *duces*
23 *tecum* pursuant to Fed. R. Bankr. P. 9016 concerning the same.
24

25 **II. Legal Background**
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27 The information that the Committee seeks is properly within the scope of an
28 FRBP 2004 request, but is specifically a proper area of inquiry for the Committee

1 under 1103(c)(2)-(3):

2 *A committee appointed under section 1102 of this title may ...*
3 *investigate the acts, conduct, assets, liabilities, and financial condition of the*
4 *debtor ... and any other matter relevant to the case or to the formulation of a*
5 *plan; [or] participate in the formulation of a plan ...*

6 **III. Argument**

7 The Committee believes the onus now lies on it to present a confirmable plan
8 to the Court, otherwise the United States Trustee will convert the present case to
9 Chapter 7.¹ ECF No. 659.

11 In order to meaningfully propose a plan of reorganization, the Committee
12 must propose how to treat the estate's main remaining asset which consists of
13 various litigation claims against third parties. The Committee proposes to hire
14 reputable contingent fee law firms in order to pursue these claims.

16 In order to proceed, the Committee needs to obtain concrete expressions of
17 interest from prospective law firms after those firms have had a chance to vet the
18 Estate's legal claims. This has not yet happened because the Trustee asserts that he
19 is bound by a protective order which was designed to protect potential defendant
20 Perkins Coie. Despite the fact that the Trustee has attempted to use that protective
21 order as a shield against sharing litigation-related documents and information with
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26 ¹ There is a general consensus in the case that to proceed with the final stage of
27 administering the estate, a confirmed Chapter 11 plan is required. The Committee
28 expects that the Chapter 11 Trustee will not propose a specific plan.

1 the Committee, the protective order clearly allows the Trustee to produce even
2 “Confidential” documents within its ambit. Paragraph 3(a) of the protective order
3 reads in full as follows:
4

5 Unless otherwise ordered by the Court or agreed to in writing by
6 Perkins and the Trustee, Confidential documents may be used only for
7 purposes relating to this bankruptcy, and may be disclosed only to:

8 a. any party in interest to this bankruptcy directly concerned with the
9 issues then in dispute relating to such Confidential documents...

10 (Emphasis added.) See ECF No. 673. That language notwithstanding, the Trustee
11 currently has exclusive access to and possession of the documents produced by
12 Perkins Coie and will not provide them to the Committee without an Order from this
13 Court.
14

15 Pursuant to LBR 2004-1(a), undersigned counsel confirms that he has made
16 numerous attempts to coordinate production of the requested documents and general
17 provision of the requested information from both the trustee and the trustee’s
18 attorney Pamela Egan, to no avail. The trustee’s attorney has refused to cooperate
19 with the Committee in fulfilling the requests which are the subject of this motion,
20 necessitating the present request for relief.
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23 Therefore, in order to finalize its own confirmable Plan and Disclosure
24 Statement, the Committee requests that the Court order the Trustee to appear for
25 examination regarding the existence, value, merit, and feasibility of all estate
26 litigation, and to produce all legal memoranda and other documents related to
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1 potential estate litigation to the Committee, including any discovery that the Chapter
2 11 Trustee has already obtained (or will obtain) from targets of such litigation,
3 including but not limited to documents produced by Perkins Coie.
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5 DATED this 1st day of September, 2020.

6 **SALISH SEA LEGAL PLLC**

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